IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 191 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

NATIONAL HOUSING BANK - Petitioner(s)

Versus

EKTA FINSTOCK & INVESTMENT LTD - Respondent(s)

==========

Appearance :

SINGHI & CO for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date : 10/08/2005

ORAL JUDGMENT

1.The petitioner, namely, National Housing Bank,

established under the National Housing Bank Act, 1987 has filed this petition under Section 33(B) of the National Housing Bank Act, 1987, for winding up of the respondent Company, namely, Ekta Finstock & Investment Ltd.

2. It is the case of the petitioner that the respondent Company was collecting deposits from the public and was not repaying the same and hence Reserve Bank of India vide its letter dated 27.3.2000 and another letter dated 28.9.2000 informed the petitioner that a case has been filed against the said Company with Navsari Town Police Station bearing CR No.47/2000. It is also the case of the petitioner that the respondent Company has not applied for registration under Section 29A of the National Housing Bank Act, 1987 and hence by virtue of the provisions of Section 29A the respondent became disqualified to carry on the business of a housing finance institution. It is also stated that the respondent Company has continued to contravene the directions issued by

National Housing Board from time to time. The respondent Company has not filed annual return for the year ended 31.3.1999 and thereafter, as required under paragraph 39(1) of the directions issued by Reserve Bank of India. The respondent Company has also not filed return on liquid assets for the quarter ended 30.6.1999, nor it has filed text of advertisement / SILA for the year 1998-99 and thereafter, as required under Paragraph-16 of the directions. The respondent Company has also not filed auditors' certificate for the year 31.3.1998 and also Balance sheet and Profit and Loss account for the year 1998-99. In view of these facts, the petitioner has called upon the respondent Company to show cause within 15 days from the date of receipt of the show cause notice dated 17.4.2001, as to why action in terms of the provisions of the NHB Act should not be taken against the Company and its directors for the contraventions of the directions and that if no reply was received it would be presumed that the Company has nothing to say in this regard and the

petitioner might proceed further in the matter.

3. Despite the aforesaid notice the respondent Company has not given any reply. It is also stated in the petition that no information was available in respect of the whereabouts of the directors and managers of the Company. It is also stated in the petition that in view of the provision contained in the Companies Act, 1956 read with the provision contained in National Housing Bank Act, the respondent is liable to be wound up, as it has failed to discharge its liability and also it did not apply for registration under Section 29A of the National Housing Bank Act and the period of six months has since elapsed, and its continuance was detrimental to the public interest or to the interest of its depositors.

4. This Court has issued notice on 2.12.2002. The Court has also directed the O.L to appoint any person from the Office of the O.L as Court Commissioner to take out inventory of the assets

and properties of the respondent Company. It was also clarified that at the time of taking inventory if no one was present on behalf of the respondent Company, and the premises was found to be closed, the Court Commissioner was permitted to place the seal on the premises and the petitioner was permitted to move this Court for further orders in the matter. Pursuant to the aforesaid direction issued on 2.12.2002 the O.L has filed his report dated 26.12.2002. On the basis of the said report and after hearing the learned advocate appearing for the petitioner, the Court has admitted the petition and order of advertisement was also passed. The petitioner was directed to give advertisement in two newspapers, namely, “Indian Express” Vadodara Edition and “Gujarat Mitra” Surat Edition, fixing the date of final hearing 22.6.2005. Publication of advertisement in Government Gazette was dispensed with.

5. Pursuant to the said order dated 28.4.2005, an advertisement was given and affidavit of service

was filed on 4.8.2005 alongwith which the relevant newspapers cuttings were annexed.

6. Nobody appeared on behalf of the respondent Company at any stage, neither in response to the notice nor even after publication of advertisement in the newspapers. Ms.Poonam Mathur learned advocate appearing for the petitioner has submitted that the respondent Company is closed since long and directors of the Company have freterred away the amount collected from the public. There was no whereabout of any of the directors. She has further submitted that the petitioner has the right to move the present petition for winding up of the respondent Company. She has further submitted that Chapter V of the National Housing Bank Act, 1987 confers powers on the petitioner to regulate the activities of the housing finance institutions and to issue directions / guidelines to such institutions with a view to ensure their growth on healthy and sound lines and also with a view to protect public interest so that while accepting

deposits from public, such institutions do not exploit the gullible depositors. She has further submitted that the Companies registered under the Companies Act, 1956 and satisfying the definition of housing finance institution under the said Act are also governed by the provisions of the said Act and the directions / guidelines issued by the petitioner.

7. She has further submitted that in exercise of powers vested in it, the petitioner has issued directions / guidelines to the housing finance institutions from time to time. The petitioner has issued directions on 26.6.1998 These directions have been modified from time to time. The petitioner has superseded these directions on 27.9.2001 and issued fresh directions known as the Housing Finance Companies Directions, 2001, which are currently in force. She has further submitted that by paragraph -43 of the said directions, all actions taken or that may have been taken for the contravention of the Housing Finance companies

Directions, 1989 have been saved. She has further submitted that National Housing Bank Act, 1987 was amended with effect from 12.6.2000 by virtue of which new Section (Section-29A) was inserted which required a housing finance institution which is a company to obtain a certificate of registration from the petitioner for carrying on the business of housing finance. The existing companies were given six months time from the date of coming into force of the said amendment Act, i.e. June 12, 2000 to comply with the said requirement. She has further submitted that only those companies which conform to provisions of the said Act or Directions or guidelines etc. issued by NHB pursuant to the powers vested in it under the said Act are eligible to carry on the business of housing finance. She has further submitted that Section 33B of the Act empower the petitioner to file application for winding up if it is satisfied that a housing finance institution which is unable to pay its debt or has by virtue of the provisions of Section 29A become disqualified to carry on the business of a

housing finance institution or has been prohibited by the petitioner from receiving deposit by an order and such order has been in force for a period of not less than three months or its continuance is detrimental to the public interest or to the interest of its depositors. She has further submitted that the quarterly return on liquid assets furnished by the Company to the petitioner as of March, 1999 had indicated that the said Company has public deposits amounting to Rs.22.80 lacs. This depositors' money and other debts to the said Company were in jeopardy as an inspection of the Company by the official official of NHB in October, 2000 has revealed that the office of the Company was found locked. The house owner informed that the premise was given on rent to the company and it has not been visited by directors and officers of the Company for last few months. It was also found that the address of the main office of the Company as published in the news item in 'Gujaratmitra' dated 15.3.2000 was found to be occupied by a Courier Service and a Traveling

Agent. It was further found that the Navsari and Bardoli branch of the Company were found to be locked and it was gathered from the neighbours that the Company had taken it on rent and have now ran away with the public deposits. It was also found that the directors of the Company were not residing at their known addresses. Considering all these facts the learned advocate for the petitioner submitted that the Company has closed its business activities and no persons was found in the office of the respondent Company. The only course which is left open is to approach this Court for winding up of the respondent Company.

8. After having heard the learned advocate for the petitioner and after having gone through the submissions made in the petition as well as documentary evidence produced on record by the petitioner as well as report fled by the O.L, the Court is of the view that the Company has virtually closed down its business activities after having cheated the public at large by taking deposit from

them and did not return any money to them. The Company is, therefore, required to be wound up under the provision of the Companies Act, 1956 read with the provision of National Housing Bank Act, 1987.

9. The respondent Company is, therefore, hereby wound up and O.L attached to this Court is appointed as the Liquidator of the Company and he is directed to take charge of assets of the Company and he is further directed to exercise all the powers conferred upon him under the provisions of Companies Act, 1956. The Official Liquidator will intimate to the petitioner, secured creditors, if any, as well as the directors of the Company to remain present at the time of taking possession of the assets and also at the time of taking inventory. He is further directed to take prior permission of this Court before appointing security agency or valuer to take the inventory of the assets of the Company. He is further directed to ask the Ex-directors to file Statement of Affairs

and he shall invite claim from the creditors and the workers.

10.

11.With this direction and observation this Company Petition is accordingly disposed off.

(K.A.PUJ,J.)

kks